IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN AT JODHPUR

CIVIL MISC. APPEAL No. 1948 of 2004

NATIONAL INSURANCE COMPANY LTD
V/S
SMT. DURGA DEVI & ORS

Mr. JAGDISH VYAS, for the appellant / petitioner

Date of Order : 3.1.2005

HON'BLE SHRI N P GUPTA,J.

ORDER

This appeal has been filed against the award dated 22.3.2000 in claim no.320 of 98 decreeing the claim. The appeal was filed on 7.7.2000. The registry pointed out two defects, viz., that the appeal is barred by two days, and the other objection was that some of the claimants have not been impleaded as party in the appeal. The matter came up for consideration of the application under Section 5 of the Limitation Act, whereupon notice was issued, and vide order dated 10.12.2004, the delay in filing the appeal was condoned. However, the registry has pointed out that other defect has not been removed as yet.

Learned counsel, in these circumstances, was asked, as to how the present appeal is properly constituted in absence of all the claimants, to which, learned counsel submitted that a look at page 28 of the impugned judgment shows that the award has not been passed in favour of all the claimants, and therefore, the other persons have not been impleaded as party respondents.

I have perused the award, and find that the award has been passed in favour of Smt.Durga Devi, Asha, Ajay Kumar and Dilip Kumar, while in the list of respondents, Ajay Kumar has not been impleaded as party respondent, and since the decree is collective in favour of all the persons, in whose favour, claim has been decreed, therefore, in absence of one of the claimants, in whose favour, the decree has been passed, the appeal cannot be said to be properly constituted.

Learned counsel for the appellant at this stage submitted that he may be allowed to implead the claimant now as party respondent. At this belated stage, I am not inclined to entertain this request either.

The appeal is, therefore, dismissed as not properly constituted.

(N P GUPTA),J.

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